

CHESAPEAKE BAY
PRESERVATION AREA

CITY OF COLONIAL HEIGHTS
VIRGINIA

ARTICLE XI

CHESAPEAKE BAY PRESERVATION AREA

OVERLAY DISTRICT

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AN ORDINANCE NO. 90-27

(AS AMENDED ON SEPTEMBER 12, 1990)

To amend and reordain Chapter 24, Zoning, of the Colonial Heights City Code, by adding therein a new Article XI, Chesapeake Bay Preservation Area Overlay District, providing for the regulation of land development within preservation areas delineated herein.

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That Chapter 24, Zoning, of the Colonial Heights City Code, be, and is hereby, amended and reordained by adding therein a new Article XI, Chesapeake Bay Preservation Area Overlay District, as follows:

9/17/90 - orig. to Lta

2. That technical amendments to Article XI, Chesapeake Bay Preservation Areas Overlay District, of Chapter 24, Zoning, adopted by Council at its regular meeting, September 12, 1990, be, and are incorporated herein, as follows:

A. The Resource Management Areas (RMAS) are described in Article XI to include highly permeable soils. The City has indicated that soils maps were not available for the entire City, therefore, highly permeable soils could not be considered in designating Resource Management Areas. Those land features which were excluded from the City's RMAS should also be excluded from the ordinance's RMA description.

B. The section on vesting, which exempted certain development from the ordinance goes beyond an August 10, 1990, Attorney General opinion issued to the County Attorney for Prince William County. It is recommended that the City's interpretation of the vesting issue be that which is recognized by law and those specifically included in the Chesapeake Bay Preservation Act.

C. In part 24-251.(g)(1) "average land cover condition" either may be calculated for each watershed in Colonial Heights (e.g. Old Town Creek, Swift Creek, Appomattox River, etc.), or the CBLAD provided default value of 0.45 lbs. phosphorus/acre/year for all of Tidewater may be used. The staff is recommending the CBLAD provided ratio method.

D. Part 24-269.(a), "Exemptions for Utilities, Railroads and Public Roads", needs a paragraph added at the beginning. This was an oversight by CBLAD in the model ordinance. Clarification may be achieved with regards to the public road exemption in cities by insertion of the language, "roads built with public funds."

ARTICLE XI. Chesapeake Bay Preservation Area
Overlay District

Division 1. General

Section 24-238. Title.

This Article shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of the City of Colonial Heights.

Section 24-239. Purpose and Intent.

This Article is enacted to implement the requirements of Section 10.1 - 2100 et seq of the Code of Virginia (The Chesapeake Bay Preservation Act) and supplements the "City of Colonial Heights Zoning Ordinance." The intent of City Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the City of Colonial Heights.

Section 24-240. Review and Approval Procedures.

The Overlay District shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in the Building Code, Zoning Ordinance, Subdivision Ordinance and Soil Erosion and Sediment Control Ordinance shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.

Section 24-241. Authority.

This Article is enacted under the authority of Section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and Section 15.1-489, of the Code of Virginia. Section 15.1-489 states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-44.85 (8)."

Section 24-242. Definitions.

The following words and terms used in The Overlay District have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this Article but defined in the Zoning Ordinance shall be given the meanings set forth therein.

"Best Management Practices" or "BMPs" means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" or "CBPA" means any land designated by the City Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01, and Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Development" means the construction, or substantial alteration, of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Flood plain" means all lands designated by the Federal Emergency Management Agency (FEMA) that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight (8). The erodibility index for any soil is defined as the product of the formula $RKLS/T$ as defined by the "Flood Security Act (F.S.A.) Manual" of August, 1988, in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid")

as found in the "National Soils Handbook" of July, 1983, in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service.

"Infill" means utilization of vacant land in previously developed areas.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to; roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Nonpoint source pollution" means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the federal Clean Water Act, in 33 C.F.R. 328.3b, dated November 13, 1986.

"Noxious weeds" means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and mulfilora rose.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with Section 10.1-2109 of the Act and these regulations, prior to issuance of a building permit.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" (RMA) means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" (RPA) means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant gradation to the quality of state waters.

"Substantial alteration" means expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in Section 62.1-13.2 of the Code of Virginia.

"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000).

"Use" means an activity on the land other than development, including, but not limited to agriculture, horticulture and silviculture.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plans, sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas, and (v) fisheries or other marine resources facilities.

"Wetlands" means tidal and nontidal wetlands.

Section 24-243. Area of Applicability.

The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the City Council and as shown on the "Chesapeake Bay Preservation Area Maps" dated July 1, 1990. The "Chesapeake Bay Preservation Area Maps" dated July 1, 1990, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this Article.

The Resource Protection Area includes:

- a. Tidal wetlands;
- b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;
- c. Tidal shores;

- d. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections a. through c. above, and along both sides of any tributary stream.

The Resource Management Area is composed of concentrations of the following land categories: floodplains; highly erodible soils, including steep slopes; highly permeable soils; nontidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters.

The "Chesapeake Bay Preservation Area Maps" dated July 1, 1990 show the general location of CBPAs and should be consulted by persons contemplating activities within the City of Colonial Heights prior to engaging in a regulated activity.

If the boundaries of a CBPA include a portion of a lot, parcel, or development project, the entire lot, parcel, or development project shall comply with the requirements of the Overlay District. The division of property shall not constitute an exemption from this requirement.

The provisions of this ordinance shall not apply to any development in which any of the following conditions apply:

- a. Site Plan or Subdivision Plan submitted prior to the enactment date of the ordinance.
- b. Preliminary Subdivision Plat approved, or submitted ninety (90) days, prior to the enactment date of the ordinance.
- c. Grading Plan submitted prior to the enactment date of the ordinance.
- d. The elements contained on a proffered plan developed during rezoning and approved prior to the enactment date of the ordinance.
- e. The elements contained on a Special Exception Plan or Special Permit approved prior to the enactment date of the ordinance.

Section 24-244. Use Regulations.

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

Section 24-245. Lot Size.

Lot size shall be subject to the requirements of the underlying zoning district(s), provided that any lot shall have sufficient area outside the RPA to accommodate an

intended development, in accordance with the performance standards in Division 3 when such development is not otherwise allowed in the RPA.

Section 24-246. Required Conditions.

All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance.

Development in RPAs may be allowed only if it: (i) is water-dependent; or (ii) constitutes redevelopment.

A water quality impact assessment shall be required for any proposed development or redevelopment within RPAs and for any development within RMAs when required by the Director of Planning and Community Development because of the unique characteristics of the site or intensity of development, in accordance with the provisions of Division 4 of this Article.

Section 24-247. Conflict With Other Regulations.

In any case where the requirements of this Article conflict with any other provision of the City of Colonial Heights Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Division 2. Interpretation of Resource Protection Area Boundaries

Section 24-248. Delineation by the Applicant.

The site-specific boundaries of the Resource Protection Area shall ordinarily be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Director of Planning and Community Development and in accordance with Division 5 (Plan of Development) of this Article. The "Chesapeake Bay Preservation Area Maps" dated July 1, 1990 shall be used as a guide to the general location of Resource Protection Areas.

Section 24-249. Conflict Over Delineation.

Where the applicant has provided a site-specific delineation of the RPA, the Director of Planning and Community Development will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Director of Planning and Community Development may render adjustments to the applicant's boundary delineation, in accordance with Division 5 (Plan of Development) of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 24-267 (Denial/Appeal of Plan).

Division 3. Performance Standards

Section 24-250. Purpose and Intent.

The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve a 40% reduction in nonpoint source pollution from agricultural uses.

Section 24-251. General Performance Standards for Development and Redevelopment

- (a) Land disturbance shall be limited to the area necessary to provide for the desired use or development.
- (b) Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
- (c) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
- (d) Notwithstanding any other provisions of this Article or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks and drainfields, shall comply with the requirements of the Soil Erosion and Sediment Control Ordinance.
- (e) All on-site sewage disposal systems not requiring an VPDES permit shall be pumped out at least once every five years, in accordance with the provisions of the City of Colonial Heights Health Code.
- (f) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the City of Colonial Heights Health Code. This requirement shall not apply to any lot or parcel

recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.

(g) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

- (1) For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover condition of the City of Colonial Heights.
- (2) For isolated redevelopment sites, the nonpoint source pollution load shall be reduced by at least 10 percent. The Director of Planning and Community Development may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
 - a. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
 - b. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;
 - c. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Director of Planning and Community Development may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.
- (3) For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

- (h) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Director of Planning and Community Development in accordance with Division 5 of this Article.
- (i) Land upon which agricultural activities are being conducted shall have a soil and water quality conservation plan. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this ordinance. Such a plan shall be approved by the local Soil and Water Conservation District by January 1, 1995.

Section 24-252. Buffer Area Requirements.

To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the RPA, in accordance with Section 24-243 (Area of Applicability) and Division 5 (Plan of Development) of this Article.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. A combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the full 100-foot buffer area may be employed in lieu of the 100-foot buffer if approved by the Director of Planning and Community Development after consideration of the Water Quality Impact Assessment, in accordance with Division 4 of this Article.

The buffer area shall be maintained to meet the following additional performance standards:

- (a) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, as follows:
 - (1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other

vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

- (2) Any path shall be constructed and surfaced so as to effectively control erosion.
 - (3) Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the best available technical information.
 - (4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- (b) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Director of Planning and Community Development may modify the width of the buffer area in accordance with Division 5 (Plan of Development) and the following criteria:
- (1) Modifications to the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (2) Where possible, an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection; and
 - (3) In no case shall the reduced portion of the buffer area be less than 50 feet in width.

Division 4. Water Quality Impact Assessments

Section 24-253. Purpose and Intent.

The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed development on water quality and lands within RPAs and other environmentally-sensitive lands; (ii) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural funds of RPAs and other sensitive lands; (iii) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (iv) specify mitigation which will address water quality protection.

Section 24-254. Water Quality Impact Assessment Required.

A water quality impact assessment is required for (i) any proposed development with an RPA, including any buffer area modification or reduction as provided for in Division 3, of this Article; (ii) any development in an RMA as deemed necessary by the Director of Planning and Community Development due to the unique characteristics of the site or intensity of the proposed development. There shall be two levels of water quality impact assessments: a minor assessment and a major assessment.

Section 24-255. Minor Water Quality Impact Assessment.

A minor water quality impact assessment pertains only to development with CBPAs which causes no more than 5,000 square feet of land disturbance and requires any modification or reduction of the landward 50 feet to the 100 foot buffer area. A minor assessment must demonstrate through acceptable calculations that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff. A minor assessment shall include a site drawing to scale which show the following:

- (a) Location of the components of the RPA, including the 100-foot buffer area;
- (b) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
- (c) Type and location of proposed best management practices to mitigate the proposed encroachment.

Section 24-256. Major Water Quality Impact Assessment.

A major water quality impact assessment shall be required for any development which (i) exceeds, 5,000 square feet of land disturbance within CBPAs and requires any modification or reduction of the landward 50 feet of the 100-foot buffer area; (ii) disturbs any portion of any other component of an RPA or disturbs any portion of the buffer area within 50 feet of any other component of an RPA; or (iii) is located in an RMA and is deemed necessary by the Director of Planning and Community Development. The information required in this section shall be considered a minimum, unless the Director of Planning and Community Development determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

The following elements shall be included in the preparation and submission of a major water quality assessment:

- (a) All of the information required in a minor water quality impact assessment, as specified in Section 24-255;
- (b) A hydrogeological element that:
 - (1) Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
 - (2) Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
 - (3) Indicates the following:
 - a. Disturbance or destruction of wetlands and justification for such action;
 - b. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
 - c. Disruptions to existing hydrology including wetland and stream circulation patterns;
 - d. Source location and description of proposed fill material;
 - e. Location of dredge material and location of dumping area for such material;
 - f. Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;

- g. Estimation of pre- and post-development pollutant loads in runoff;
 - h. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
 - i. Percent of site to be cleared for project;
 - j. Anticipated duration and phasing schedule of construction project;
 - k. Listing of all requisite permits from all applicable agencies necessary to develop project.
- (4) Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
- a. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspections;
 - b. Proposed stormwater management system;
 - c. Creation of wetlands to replace those lost;
 - d. Minimizing cut and fill.
- (c) A landscape element that:
- (1) Identifies and delineates the location of all significant plant material, including all trees on site six (6) inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
 - (2) Describes the impacts the development or use will have on the existing vegetation. Information should include:
 - a. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
 - b. Clear delineation of all trees which will be removed;
 - c. Description of plant species to be disturbed or removed.

- (3) Describes the potential measures for mitigation. Possible mitigation measures include:
 - a. Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used;
 - b. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
 - c. Demonstration that indigenous plants are to be used to the greatest extent possible.
- (d) A wastewater element, where applicable, that:
 - (1) Includes calculations and locations of anticipated drainfield or wastewater irrigation areas;
 - (2) Provides justification for sewer line locations in environmentally-sensitive areas, where applicable, and describes construction techniques and standards;
 - (3) Discusses any proposed on-site collection and treatment systems, their treatment levels, and impacts on receiving watercourses.
 - (4) Describes the potential impacts of the proposed wastewater systems, including the proposed mitigative measures for these impacts.
- (e) Identification of the existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay Preservation Areas, as defined in this Article.
- (f) Identification of the natural processes and ecological relationships inherent in the site, and an assessment of the impact of the proposed use and development of land on these processes and relationships.

Section 24-257. Submission and Review Requirements.

- (a) Three (3) copies of all site drawings and other applicable information as required by Sections 24-255 and 24-256 above shall be submitted to the Director of Planning and Community Development for review.

- (b) All information required in this section shall be certified as complete and accurate by a professional engineer or a certified land surveyor.
- (c) A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Director or Planning and Community Development in conjunction with Division 5 (Plan of Development) of this Article.
- (d) A major water quality impact assessment shall be prepared and submitted to and reviewed by the Director of Planning and Community Development in conjunction with a request for rezoning, special use permit, or in conjunction with Division 5 of this Article, as deemed necessary by the Director of Planning and Community Development.
- (e) As part of any major water quality impact assessment submittal, the Director of Planning and Community Development may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Director of Planning and Community Development will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated in the final review by the Director of Planning and Community Development, provided that such components are provided by CBLAD within 90 days of the request.

Section 24-258. Evaluation Procedures.

- (a) Upon the completed review of a minor water quality impact assessment, the Director of Planning and Community Development will determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria in conjunction with Division 5.
 - (1) The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - (2) Impervious surface is minimized;
 - (3) Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - (4) The development, as proposed, meets the purpose and intent of this Article;

- (5) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (b) Upon the completed review of a major water quality impact assessment, the Director of Planning and Community Development will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Division 5.
- (1) Within any RPA, the proposed development is water-dependent;
 - (2) The disturbance of wetlands will be minimized;
 - (3) The development will not result in significant disruption of the hydrology of the site;
 - (4) The development will not result in significant degradation to aquatic vegetation or life;
 - (5) The development will not result in unnecessary destruction of plant materials on site;
 - (6) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 - (7) Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
 - (8) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
 - (9) The design and location of any proposed drainfield will be in accordance with the requirements of Division 3.
 - (10) The development, as proposed, is consistent with the purpose and intent of the Overlay District;
 - (11) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

- (c) The Director of Planning and Community Development shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Director of Planning and Community Development based on the criteria listed above in subsections (a) and (b).
- (d) The Director of Planning and Community Development shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Director of Planning and Community Development based on the criteria listed in subsections (a) and (b).

Division 5. Plan of Development Process

Section 24-259. Applicability.

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this Article.

Section 24-260. Required Information.

In addition to the requirements of Article II, Chapter 20 of the City of Colonial Heights Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Director of Planning and Community Development. The Director of Planning and Community Development may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

The following plans or studies shall be submitted, unless otherwise provided for:

- (a) A site plan or a subdivision plat in accordance with the provisions of Article II, Chapter 20 of the City of Colonial Heights Subdivision Ordinance;
- (b) An environmental site assessment;
- (c) A landscape plan;
- (d) A stormwater management plan;
- (e) An erosion and sediment control plan in accordance with the provisions of Chapter 29, Soil Erosion and Sediment Control Ordinance.

Section 24-261. Environmental Site Assessment.

An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

- (a) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - (1) Tidal wetlands;
 - (2) Tidal shores;
 - (3) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;
 - (4) A 100-foot buffer area located adjacent to and landward of the components listed in subsections a. through d. above, and along both sides of any tributary stream;
 - (5) Other sensitive environment features as determined by the Director of Planning and Community Development.
- (b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989.
- (c) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
- (d) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete land surveyor or a certified landscape architect. This requirement may be waived by the Director of Planning and Community Development when the proposed use or development would result in less than 5,000 square feet of disturbed area.

Section 24-262. Landscape Plan.

A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscape plan.

Landscape plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

- (a) Contents of the Plan.
 - (1) The landscape plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site six (6) inches or greater diameter at breast

height (DBH) shall be shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees six (6) inches or greater DBH to be preserved outside of the construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscape plan.

- (2) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscape plan.
- (3) Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscape plan.
- (4) Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscape plan.
- (5) The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- (6) The landscape plan will include specifications for the projection of existing trees during clearing, grading, and all phases of construction.

(b) Plant Specifications.

- (1) All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- (2) All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.

- (3) Where areas to be preserved, as designated on an approved landscape plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of three (3) planted trees to one (1) removed. Replacement trees shall be a minimum three and one-half (3.5) inches DBH at the time of planting.

(c) Maintenance.

- (1) The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this Article.
- (2) In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a health growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this Article.

Section 24-263. Stormwater Management Plan.

A stormwater management plan shall be submitted as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.

(a) Contents of the Plan.

The stormwater managements plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the stormwater management plan must contain the following:

- (1) Location and design of all planned stormwater control devices;
- (2) Procedures for implementing non-structural stormwater control practices and techniques;
- (3) Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
- (4) For facilities, verification of structural soundness, including a Professional Engineer or Class IIIB Surveyor Certification;

- (b) Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
- (c) All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, Virginia Erosion and Sediment Control Handbook, Virginia Department of Transportation Drainage Manual, or any other good engineering methods deemed appropriate by the Director of Planning and Community Development.
- (d) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the City of Colonial Heights then a maintenance agreement shall be executed between the responsible party and the City of Colonial Heights.

Section 24-264. Erosion and Sediment Control Plan.

An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with Chapter 29 Soil Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

Section 24-265. Final Plan.

Final plans for property within CBPAs shall be final plans for land to be subdivided or site plans for land not to be subdivided as required.

- (a) Final plans for all lands within CBPAs shall include the following additional information:
 - (1) The delineation of the Resource Protection Area boundary;
 - (2) The delineation of required buffer areas;
 - (3) All wetlands permits required by law;
 - (4) A maintenance agreement as deemed necessary and appropriate by the Director of Planning and Community Development to ensure proper maintenance of best management practices in order to continue their functions.

(b) Installation and Bonding Requirements.

- (1) Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.**
- (2) When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the City of Colonial Heights a form of surety satisfactory to the Director of Planning and Community Development in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.**
- (3) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the City of Colonial Heights.**
- (4) All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the City of Colonial Heights. The City of Colonial Heights may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.**
- (5) After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Director of Planning and Community Development, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Director of Planning and Community Development may require a certificate of substantial completion from a Professional Engineer or Class III B Surveyor before making a final inspection.**

Section 24-266. Administrative Responsibility.

Administration of the plan of development process shall be in accordance with Chapter 20, Subdivision of Land Ordinance of the City of Colonial Heights.

Section 24-267. Denial of Plan, Appeal of Conditions or Modifications.

In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting an appeal, the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

Division 6. Waivers, Exemptions and Exceptions

Section 24-268. Nonconforming Use and Development Waivers.

The lawful use of a building or structure which existed on October 1, 1989, or which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Overlay District may be continued in accordance with Section 24-7 of this Chapter.

No change or expansion of use shall be allowed with the exception that:

- a. The Director of Planning and Community Development may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations or additions to such nonconforming structures provided that:
 1. There will be no increase in nonpoint source pollution load;
 2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirement of this Article.
- b. An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Director of Planning and Community Development and shall include for the purpose of proper enforcement of this Article, the following information:
 1. Name and address of applicant and property owner;
 2. Legal description of the property and type of proposed use and development;
 3. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
 4. Location and description of any existing private water supply or sewage system.
- c. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.

Section 24-269. Exemptions.

(a) Exemptions for Utilities, Railroads, and Public Roads.

Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the Overlay District provided that:

- (1) To the degree possible, the location of such utilities and facilities should be outside RPAs;
- (2) No more land shall be disturbed than is necessary to provide for the desired utility installation;
- (3) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
- (4) Any land disturbance exceeding an area of 2,500 square feet complies with all City of Colonial Heights erosion and sediment control requirements.

(b) Exemptions for Silvicultural Activities.

Silvicultural activities are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations."

(c) Exemptions in Resource Protection Areas.

The following land disturbances in Resource Protection Areas may be exempted from the Overlay District; (i) water wells, (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Director of Planning and Community Development that:

- (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
- (2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
- (3) The intended use does not conflict with nearby planned or approved uses; and

- (4) Any land disturbance exceeding an area of 2,500 square feet shall comply with all City of Colonial Heights erosion and sediment control requirements.

Section 24-270. Exceptions.

- (a) A request for an exception to the requirements of this Overlay District shall be made in writing to the Director of Planning and Community Development. It shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Area through the performance of a water quality impact assessment which complies with the provisions of Section.
- (b) The Director of Planning and Community Development shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Director of Planning and Community Development finds:
- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
 - (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
 - (3) The exception request is the minimum necessary to afford relief;
 - (4) The exception request will be consistent with the purpose and intent of the Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - (5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- (c) If the Director of Planning and Community Development cannot make the required findings or refuses to grant the exception, the Director of Planning and Community Development shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning

Appeals. The applicant may then apply to the Board of Zoning Appeals for a variance as provided in Article IV of the Zoning Ordinance.

- (d) The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Director of Planning and Community Development in determining consistency with the purpose and intent of this Article.

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